

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL

No. 637

Introduced by Senator Speier

February 22, 2005

An act to ~~add Section 2982.10 to amend Sections 2981 and 2982 of, and to add Sections 2982.2 and 2982.10 to, the Civil Code, to amend Section 11713.1 of, to add Sections 4456.3 and 11713.16, 11713.7, and 11713.8 to, and to add Chapter 11 (commencing with Section 12200) to Division 5 of, to the Vehicle Code, relating to vehicles, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 637, as amended, Speier. Motor vehicle sales.

(1) Existing law governs motor vehicle conditional sale contracts, as defined. *These contracts are required under existing law to disclose certain information under the label "itemization of the amount financed."* A willful violation of ~~these~~ *all of the provisions governing conditional sales contracts* is a misdemeanor.

This bill would *include the amount charged for a theft deterrent system, as defined, and the amount charged for a surface protection system, as defined within the listing of "itemization of the amount financed."*

The bill would require a seller to provide the buyer with a specified disclosure if a conditional sale contract includes a charge for a service contract, an insurance product, a debt cancellation agreement, a theft deterrent device, or a surface protection product.

This bill would prohibit a seller, in consideration of an assignment of a conditional sale contract, from receiving or accepting from the assignee any payment or credit based upon any amount collected or received under the contract, or to be collected or received, in excess of specified amounts. Because

Insofar as a violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

(2) Under existing law, when selling a vehicle, a licensed dealer or lessor-retailer is required to use numbered report-of-sale forms issued by the Department of Motor Vehicles.

This bill would require the department to charge a 50¢ fee for each vehicle sold by a dealer or lessor-retailer and reported on a report-of-sale form. All fees collected would be deposited in the Car Buyer's Restitution Fund, which the bill would create. Money in the fund would be continuously appropriated, without regard to fiscal years, to the department to compensate or reimburse consumers, as defined, who may file an application with the department for the payment of a consumer's eligible claim, as defined, if a dealer or lessor-retailer against whom the claim is asserted has ceased selling and leasing motor vehicles to the general public or has become subject to a petition in bankruptcy.

The bill would provide a procedure for these claims, and would require, in certain cases, the consumer's verified statement to be made under penalty of perjury, thereby expanding the scope of an existing crime and imposing a state-mandated local program. The bill would also authorize the department to adopt regulations for purposes of these provisions.

(3) Existing law makes it a violation of the Vehicle Code, punishable as a misdemeanor, for the holder of a dealer's license to do, or fail to do, specified actions with regard to the advertising and sale of motor vehicles.

This bill would expand those provisions to prohibit a dealer from advertising or selling a vehicle as "certified," or using similar descriptive terms to imply that the vehicle meets the terms of a used vehicle certification program unless that vehicle meets specified criteria. Because the violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

This bill would also prohibit adding charges to a sale or lease contract without the buyer's consent and would prohibit inflating a payment or extending the maturity of contract for the purpose of disguising the actual charges for goods or services, as defined. Because the

This bill would require a dealer that obtains a consumer credit score, as defined, from a consumer credit reporting agency, as defined, for use in connection with an application for credit initiated by a consumer for the purchase or lease of a motor vehicle for personal, family, or household to provide specific information to the consumer prior to the sale or lease of that vehicle.

To the extent that a violation of these provisions would be a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2981 of the Civil Code is amended to
2 read:

3 2981. As used in this chapter, unless the context otherwise
4 requires:

5 (a) “Conditional sale contract” means:

6 (1) ~~Any~~ A contract for the sale of a motor vehicle between a
7 buyer and a seller, with or without accessories, under which
8 possession is delivered to the buyer and ~~either (A) the~~ either of
9 the following:

10 (A) The title vests in the buyer thereafter only upon the
11 payment of all or a part of the price, or the performance of any
12 other condition, ~~or (B) a~~.

13 (B) A lien on the property is to vest in the seller as security for
14 the payment of part or all of the price, or for the performance of
15 any other condition, ~~or~~.

16 (2) ~~Any~~ A contract for the bailment of a motor vehicle between
17 a buyer and a seller, with or without accessories, by which the
18 bailee or lessee agrees to pay as compensation for use a sum
19 substantially equivalent to or in excess of the aggregate value of
20 the vehicle and its accessories, if any, at the time the contract is

1 executed, and by which it is agreed that the bailee or lessee will
2 become, or for no other or for a nominal consideration has the
3 option of becoming, the owner of the vehicle upon full
4 compliance with the terms of the contract.

5 (b) “Seller” means a person engaged in the business of selling
6 or leasing motor vehicles under conditional sale contracts.

7 (c) “Buyer” means the person who buys or hires a motor
8 vehicle under a conditional sale contract.

9 (d) “Person” includes an individual, company, firm,
10 association, partnership, trust, corporation, limited liability
11 company, or other legal entity.

12 (e) “Cash price” means the amount for which the seller would
13 sell and transfer to the buyer unqualified title to the motor vehicle
14 described in the conditional sale contract, if the property were
15 sold for cash at the seller’s place of business on the date the
16 contract is executed, and shall include taxes to the extent
17 imposed on the cash sale and the cash price of accessories or
18 services related to the sale—~~such as~~, *including, but not limited to*,
19 delivery, installation, alterations, modifications, improvements,
20 document preparation fees, a service contract, and payment of a
21 prior credit or lease balance remaining on property being traded
22 in.

23 (f) “Downpayment” means—~~any~~ *a* payment which the buyer
24 pays or agrees to pay to the seller in cash or property value or
25 money’s worth at or prior to delivery by the seller to the buyer of
26 the motor vehicle described in the conditional sale contract. The
27 term shall also include the amount of any portion of the
28 downpayment the payment of which is deferred until not later
29 than the due date of the second otherwise scheduled payment, if
30 the amount of the deferred downpayment is not subject to a
31 finance charge. The term does not include any administrative
32 finance charge charged, received or collected by the seller as
33 provided in this chapter.

34 (g) “Amount financed” means the amount required to be
35 disclosed pursuant to paragraph (8) of subdivision (a) of Section
36 2982.

37 (h) “Unpaid balance” means the difference between
38 *subdivision* (e) and *subdivision*(f), plus all insurance premiums
39 (except for credit life or disability insurance when the amount
40 thereof is included in the finance charge), which are included in

1 the contract balance, and the total amount paid or to be paid ~~(1)~~
2 ~~to any, as follows:~~

3 (1) ~~To a public officer in connection with the transaction, and~~
4 ~~(2) for.~~

5 (2) *For* license, certificate of title, and registration fees
6 imposed by law, and the amount of the state fee for issuance of a
7 certificate of compliance or certificate of waiver pursuant to
8 Section 9889.56 of the Business and Professions Code.

9 (i) “Finance charge” has the meaning set forth for that term in
10 Section 226.4 of Regulation Z. The term shall not include
11 delinquency charges or collection costs and fees as provided by
12 subdivision (k) of Section 2982, extension or deferral agreement
13 charges as provided by Section 2982.3, or amounts for insurance,
14 repairs to or preservation of the motor vehicle, or preservation of
15 the security interest therein advanced by the holder under the
16 terms of the contract.

17 (j) “Total of payments” means the amount required to be
18 disclosed pursuant to subdivision (h) of Section 226.18 of
19 Regulation Z. The term includes any portion of the downpayment
20 ~~which that~~ is deferred until not later than the second otherwise
21 scheduled payment and which is not subject to a finance charge.
22 The term shall not include amounts for ~~which that~~ the buyer may
23 later become obligated under the terms of the contract in
24 connection with insurance, repairs to or preservation of the motor
25 vehicle, preservation of the security interest therein, or otherwise.

26 (k) “Motor vehicle” means ~~any a~~ vehicle required to be
27 registered under the Vehicle Code ~~which that~~ is bought for use
28 primarily for personal or family purposes, and does not mean any
29 vehicle ~~which that~~ is bought for use primarily for business or
30 commercial purposes or a mobilehome, as defined in Section
31 18008 of the Health and Safety Code which is sold on or after
32 July 1, 1981. “Motor vehicle” does not include any trailer ~~which~~
33 ~~that~~ is sold in conjunction with a vessel and ~~which that~~ comes
34 within the definition of “goods” under Section 1802.1.

35 (l) “Purchase order” means a sales order, car reservation,
36 statement of transaction or any other such instrument used in the
37 conditional sale of a motor vehicle pending execution of a
38 conditional sale contract. The purchase order shall conform to the
39 disclosure requirements of subdivision (a) of Section 2982 and

1 Section 2984.1, and the provisions of subdivision (m) of Section
2 2982 shall be applicable thereto *apply*.

3 (m) “Regulation Z” means ~~any~~ a rule, regulation or
4 interpretation promulgated by the Board of Governors of the
5 Federal Reserve System (“Board”) under the federal Truth in
6 Lending Act, as amended (15 U.S.C. 1601, et seq.), and ~~any~~ an
7 interpretation or approval issued by an official or employee of
8 the Federal Reserve System duly authorized by the board under
9 the Truth in Lending Act, as amended, to issue ~~such~~ the
10 interpretations or approvals.

11 (n) “Simple-interest basis” means the determination of a
12 finance charge, other than an administrative finance charge, by
13 applying a constant rate to the unpaid balance as it changes from
14 time to time either:

15 (1) Calculated on the basis of a 365-day year and actual days
16 elapsed (although the seller may, but need not, adjust its
17 calculations to account for leap years); reference in this chapter
18 to the “365-day basis” shall mean this method of determining the
19 finance charge, or

20 (2) For contracts entered into prior to January 1, 1988,
21 calculated on the basis of a 360-day year consisting of 12 months
22 of 30 days each and on the assumption that all payments will be
23 received by the seller on their respective due dates; reference in
24 this chapter to the “360-day basis” shall mean this method of
25 determining the finance charge.

26 (o) “Precomputed basis” means the determination of a finance
27 charge by multiplying the original unpaid balance of the contract
28 by a rate and multiplying that product by the number of payment
29 periods elapsing between the date of the contract and the date of
30 the last scheduled payment.

31 (p) “Service contract” means a contract in writing to perform,
32 over a fixed period of time or for a specified duration, services
33 relating to the maintenance or repair, or both, of the motor
34 vehicle described in the conditional sale contract.

35 (q) *“Surface protection product” means the following*
36 *products installed by the seller after the motor vehicle is sold:*

37 (1) *Undercoating.*

38 (2) *Rustproofing.*

39 (3) *Chemical or film paint sealant or protectant and chemical*
40 *upholstery.*

1 (4) *Carpet and fabric sealant or stain inhibitor.*

2 (r) *“Theft deterrent device” means the following devices*
3 *installed by the seller after the motor vehicle is sold:*

4 (1) *A vehicle alarm system.*

5 (2) *A window etch product.*

6 (3) *A body part marking product.*

7 (4) *A steering lock.*

8 (5) *A pedal or ignition lock.*

9 (6) *A fuel or ignition kill switch.*

10 SEC. 2. *Section 2982 of the Civil Code is amended to read:*

11 2982. ~~Every~~ *A conditional sale contract subject to this chapter*
12 *shall contain the disclosures required by Regulation Z, whether*
13 *or not Regulation Z applies to the transaction. In addition, to the*
14 *extent applicable, the contract shall contain the other disclosures*
15 *and notices required by, and shall satisfy the requirements and*
16 *limitations of, this section. The disclosures required by*
17 *subdivision (a) may be itemized or subtotaled to a greater extent*
18 *than as required by that subdivision and shall be made together*
19 *and in the sequence set forth in that subdivision. All other*
20 *disclosures and notices may appear in the contract in any location*
21 *or sequence and may be combined or interspersed with other*
22 *provisions of the contract.*

23 (a) *The contract shall contain the following disclosures, as*
24 *applicable, which shall be labeled “itemization of the amount*
25 ~~*financed*~~*”: financed.”*

26 (1) (A) *The cash price, exclusive of document preparation*
27 *fees, taxes imposed on the sale, pollution control certification*
28 *fees, prior credit or lease balance on property being traded in, and*
29 *the amount charged for a service contract, the amount charged*
30 *for a theft deterrent system, and the amount charged for a*
31 *surface protection product.*

32 (B) *The fee to be retained by the seller for document*
33 *preparation.*

34 (C) *The fee charged by the seller for certifying that the motor*
35 *vehicle complies with applicable pollution control requirements.*

36 (D) *A charge for a theft deterrent device.*

37 (E) *A charge for a surface protection product.*

38 (F) *Taxes imposed on the sale.*

39 ~~(E)~~

1 (G) The amount of any optional business partnership
2 automation fee to register or transfer the vehicle, which shall be
3 labeled “Optional DMV Electronic Filing Fee.”

4 ~~(F)~~

5 (H) The amount charged for a service contract.

6 ~~(G)~~

7 (I) The prior credit or lease balance remaining on property
8 being traded in, as required by paragraph (6). The disclosure
9 required by this subparagraph shall be labeled “prior credit or
10 lease balance (see downpayment and trade-in calculation).”

11 ~~(H)~~

12 (J) Any charge for an optional debt cancellation agreement.

13 ~~(I)~~

14 (K) The total cash price, which is the sum of subparagraphs
15 (A) to ~~(H)~~ (J), inclusive.

16 (2) Amounts paid to public officials for the following:

17 (A) Vehicle license fees.

18 (B) Registration, transfer, and titling fees.

19 (C) California tire fees imposed pursuant to Section 42885 of
20 the Public Resources Code.

21 (3) The aggregate amount of premiums agreed, upon
22 execution of the contract, to be paid for policies of insurance
23 included in the contract, excluding the amount of any insurance
24 premium included in the finance charge.

25 (4) The amount of the state fee for issuance of a certificate of
26 compliance, noncompliance, exemption, or waiver pursuant to
27 any applicable pollution control statute.

28 (5) A subtotal representing the sum of the foregoing items.

29 (6) The amount of the buyer’s downpayment itemized to show
30 the following:

31 (A) The agreed value of the property being traded in.

32 (B) The prior credit or lease balance, if any, owing on the
33 property being traded in.

34 (C) The net agreed value of the property being traded in,
35 which is the difference between the amounts disclosed in
36 subparagraphs (A) and (B). If the prior credit or lease balance of
37 the property being traded in exceeds the agreed value of the
38 property, a negative number shall be stated.

39 (D) The amount of any portion of the downpayment to be
40 deferred until not later than the due date of the second regularly

1 scheduled installment under the contract and which is not subject
2 to a finance charge.

3 (E) The amount of any manufacturer's rebate applied or to be
4 applied to the downpayment.

5 (F) The remaining amount paid or to be paid by the buyer as a
6 downpayment.

7 (G) The total downpayment. If the sum of subparagraphs (C)
8 to, inclusive, is zero or more, that sum shall be stated as the total
9 downpayment and no amount shall be stated as the prior credit or
10 lease balance under subparagraph ~~(G)~~ (I) of paragraph (1). If the
11 sum of subparagraphs (C) to (F), inclusive, is less than zero, then
12 that sum, expressed as a positive number, shall be stated as the
13 prior credit or lease balance under subparagraph ~~(G)~~ (I) of
14 paragraph (1), and zero shall be stated as the total downpayment.
15 The disclosure required by this subparagraph shall be labeled
16 "total downpayment" and shall contain a descriptor indicating
17 that if the total downpayment is a negative number, a zero shall
18 be disclosed as the total downpayment and a reference made that
19 the remainder shall be included in the disclosure required
20 pursuant to subparagraph ~~(G)~~ (I) of paragraph (1).

21 (7) The amount of any administrative finance charge, labeled
22 "prepaid finance charge."

23 (8) The difference between item (5) and the sum of items (6)
24 and (7), labeled "amount financed."

25 (b) No particular terminology is required to disclose the items
26 set forth in subdivision (a) except as expressly provided in that
27 subdivision.

28 (c) If payment of all or a portion of the downpayment is to be
29 deferred, the deferred payment shall be reflected in the payment
30 schedule disclosed pursuant to Regulation Z.

31 (d) If the downpayment includes property being traded in, the
32 contract shall contain a brief description of that property.

33 (e) The contract shall contain the names and addresses of all
34 persons to whom the notice required under Section 2983.2 and
35 permitted under Sections 2983.5 and 2984 is to be sent.

36 (f) (1) If the contract includes a finance charge determined on
37 the precomputed basis, the contract shall identify the method of
38 computing the unearned portion of the finance charge in the
39 event of prepayment in full of the buyer's obligation and contain
40 a statement of the amount or method of computation of any

1 charge that may be deducted from the amount of any unearned
2 finance charge in computing the amount that will be credited to
3 the obligation or refunded to the buyer. The method of
4 computing the unearned portion of the finance charge shall be
5 sufficiently identified with a reference to the actuarial method if
6 the computation will be under that method. The method of
7 computing the unearned portion of the finance charge shall be
8 sufficiently identified with a reference to the Rule of 78's, the
9 sum of the digits, or the sum of the periodic time balances
10 method in all other cases, and those references shall be deemed
11 to be equivalent for disclosure purposes.

12 (2) If the contract includes a finance charge which is
13 determined on the simple-interest basis but provides for a
14 minimum finance charge in the event of prepayment in full, the
15 contract shall contain a statement of that fact and the amount of
16 the minimum finance charge or its method of calculation.

17 (g) (1) If the contract includes a finance charge which is
18 determined on the precomputed basis and provides that the
19 unearned portion of the finance charge to be refunded upon full
20 prepayment of the contract is to be determined by a method other
21 than actuarial, the contract shall contain a notice, in at least
22 10-point boldface type if the contract is printed, reading as
23 follows: "Notice to buyer: (1) Do not sign this agreement before
24 you read it or if it contains any blank spaces to be filled in. (2)
25 You are entitled to a completely filled-in copy of this agreement.
26 (3) You can prepay the full amount due under this agreement at
27 any time and obtain a partial refund of the finance charge if it is
28 \$1 or more. Because of the way the amount of this refund will be
29 figured, the time when you prepay could increase the ultimate
30 cost of credit under this agreement. (4) If you default in the
31 performance of your obligations under this agreement, the
32 vehicle may be repossessed and you may be subject to suit and
33 liability for the unpaid indebtedness evidenced by this
34 agreement."

35 (2) If the contract includes a finance charge which is
36 determined on the precomputed basis and provides for the
37 actuarial method for computing the unearned portion of the
38 finance charge upon prepayment in full, the contract shall contain
39 a notice, in at least 10-point boldface type if the contract is
40 printed, reading as follows: "Notice to buyer: (1) Do not sign this

agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time and obtain a partial refund of the finance charge if it is \$1 or more. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.”

(3) If the contract includes a finance charge which is determined on the simple-interest basis, the contract shall contain a notice, in at least 10-point boldface type if the contract is printed, reading as follows: “Notice to buyer: (1) Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. (2) You are entitled to a completely filled-in copy of this agreement. (3) You can prepay the full amount due under this agreement at any time. (4) If you default in the performance of your obligations under this agreement, the vehicle may be repossessed and you may be subject to suit and liability for the unpaid indebtedness evidenced by this agreement.”

(h) The contract shall contain a notice in at least 8-point boldface type, acknowledged by the buyer, that reads as follows:

“If you have a complaint concerning this sale, you should try to resolve it with the seller.

Complaints concerning unfair or deceptive practices or methods by the seller may be referred to the city attorney, the district attorney, or an investigator for the Department of Motor Vehicles, or any combination thereof.

After this contract is signed, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change, and it is an unfair or deceptive practice for the seller to make a unilateral change.

Buyer’s Signature”

(i) (1) The contract shall contain an itemization of any insurance included as part of the amount financed disclosed pursuant to paragraph (3) of subdivision (a) and of any insurance

1 included as part of the finance charge. The itemization shall
2 identify the type of insurance coverage and the premium charged
3 therefor, and, if the insurance expires before the date of the last
4 scheduled installment included in the repayment schedule, the
5 term of the insurance shall be stated.

6 (2) If any charge for insurance, other than for credit life or
7 disability, is included in the contract balance and disbursement of
8 any part thereof is to be made more than one year after the date
9 of the conditional sale contract, any finance charge on the
10 amount to be disbursed after one year shall be computed from the
11 month the disbursement is to be made to the due date of the last
12 installment under the conditional sale contract.

13 (j) (1) Except for contracts in which the finance charge or
14 portion thereof is determined by the simple-interest basis and the
15 amount financed disclosed pursuant to paragraph (8) of
16 subdivision (a) is more than two thousand five hundred dollars
17 (\$2,500), the dollar amount of the disclosed finance charge may
18 not exceed the greater of:

19 (A) (i) One and one-half percent on so much of the unpaid
20 balance as does not exceed two hundred twenty-five dollars
21 (\$225), 1 1/6 percent on so much of the unpaid balance in excess
22 of two hundred twenty-five dollars (\$225) as does not exceed
23 nine hundred dollars (\$900) and five-sixths of 1 percent on so
24 much of the unpaid balance in excess of nine hundred dollars
25 (\$900) as does not exceed two thousand five hundred dollars
26 (\$2,500); or

27 (ii) One percent of the entire unpaid balance; multiplied in
28 either case by the number of months (computed on the basis of a
29 full month for any fractional month period in excess of 15 days)
30 elapsing between the date of the contract and the due date of the
31 last installment; or

32 (B) If the finance charge is determined by the precomputed
33 basis, twenty-five dollars (\$25); or

34 (C) If the finance charge or a portion thereof is determined by
35 the simple-interest basis:

36 (i) Twenty-five dollars (\$25) if the unpaid balance does not
37 exceed one thousand dollars (\$1,000).

38 (ii) Fifty dollars (\$50) if the unpaid balance exceeds one
39 thousand dollars (\$1,000) but does not exceed two thousand
40 dollars (\$2,000).

1 (iii) Seventy-five dollars (\$75) if the unpaid balance exceeds
2 two thousand dollars (\$2,000).

3 (2) The holder of the contract may not charge, collect, or
4 receive a finance charge which exceeds the disclosed finance
5 charge, except to the extent (A) caused by the holder's receipt of
6 one or more payments under a contract which provides for
7 determination of the finance charge or a portion thereof on the
8 365-day basis at a time or times other than as originally
9 scheduled whether or not the parties enter into an agreement
10 pursuant to Section 2982.3, (B) permitted by paragraph (2), (3),
11 or (4) of subdivision (c) of Section 226.17 of Regulation Z, or
12 (C) permitted by subdivisions (a) and (c) of Section 2982.8.

13 (3) If the finance charge or a portion thereof is determined by
14 the simple-interest basis and the amount of the unpaid balance
15 exceeds five thousand dollars (\$5,000), the holder of the contract
16 may, in lieu of its right to a minimum finance charge under
17 subparagraph (C) of paragraph (1), charge, receive, or collect on
18 the date of the contract an administrative finance charge not to
19 exceed seventy-five dollars (\$75), provided that the sum of the
20 administrative finance charge and the portion of the finance
21 charge determined by the simple-interest basis shall not exceed
22 the maximum total finance charge permitted by subparagraph (A)
23 of paragraph (1). Any administrative finance charge that is
24 charged, received, or collected by a holder shall be deemed a
25 finance charge earned on the date of the contract.

26 (4) If a contract provides for unequal or irregular payments, or
27 payments on other than a monthly basis, the maximum finance
28 charge shall be at the effective rate provided for in paragraph (1),
29 having due regard for the schedule of installments.

30 (k) The contract may provide that for each installment in
31 default for a period of not less than 10 days the buyer shall pay a
32 delinquency charge in an amount not to exceed in the aggregate 5
33 percent of the delinquent installment, which amount may be
34 collected only once on any installment regardless of the period
35 during which it remains in default. Payments timely received by
36 the seller under an extension or deferral agreement may not be
37 subject to a delinquency charge unless the charge is permitted by
38 Section 2982.3. The contract may provide for reasonable
39 collection costs and fees in the event of delinquency.

(l) Notwithstanding any provision of a contract to the contrary, the buyer may pay at any time before maturity the entire indebtedness evidenced by the contract without penalty. In the event of prepayment in full:

(1) If the finance charge was determined on the precomputed basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, provided, however, that the buyer shall be entitled to a refund credit in the amount of the unearned portion of the finance charge, except as provided in paragraphs (3) and (4). The amount of the unearned portion of the finance charge shall be at least as great a proportion of the finance charge, including any additional finance charge imposed pursuant to Section 2982.8 or other additional charge imposed because the contract has been extended, deferred, or refinanced, as the sum of the periodic monthly time balances payable more than 15 days after the date of prepayment bears to the sum of all the periodic monthly time balances under the schedule of installments in the contract or, if the contract has been extended, deferred, or refinanced, as so extended, deferred, or refinanced. If the amount of the refund credit is less than one dollar (\$1), no refund credit need be made by the holder. Any refund credit may be made in cash or credited to the outstanding obligations of the buyer under the contract.

(2) If the finance charge or a portion thereof was determined on the simple-interest basis, the amount required to prepay the contract shall be the outstanding contract balance as of that date, including any earned finance charges which are unpaid as of that date and, if applicable, the amount provided in paragraph (3), and provided further that in cases where a finance charge is determined on the 360-day basis, the payments theretofore received will be assumed to have been received on their respective due dates regardless of the actual dates on which the payments were received.

(3) Where the minimum finance charge provided by subparagraph (B) or subparagraph (C) of paragraph (1) of subdivision (j), if either is applicable, is greater than the earned finance charge as of the date of prepayment, the holder shall be additionally entitled to the difference.

(4) The provisions of this subdivision may not impair the right of the seller or the seller's assignee to receive delinquency

1 charges on delinquent installments and reasonable costs and fees
2 as provided in subdivision (k) or extension or deferral agreement
3 charges as provided in Section 2982.3.

4 (5) Notwithstanding any provision of a contract to the
5 contrary, whenever the indebtedness created by any contract is
6 satisfied prior to its maturity through surrender of the motor
7 vehicle, repossession of the motor vehicle, redemption of the
8 motor vehicle after repossession, or any judgment, the
9 outstanding obligation of the buyer shall be determined as
10 provided in paragraph (1) or (2). Notwithstanding, the buyer's
11 outstanding obligation shall be computed by the holder as of the
12 date the holder recovers the value of the motor vehicle through
13 disposition thereof or judgment is entered or, if the holder elects
14 to keep the motor vehicle in satisfaction of the buyer's
15 indebtedness, as of the date the holder takes possession of the
16 motor vehicle.

17 (m) Notwithstanding any other provision of this chapter to the
18 contrary, any information required to be disclosed in a
19 conditional sale contract under this chapter may be disclosed in
20 any manner, method, or terminology required or permitted under
21 Regulation Z, as in effect at the time that disclosure is made,
22 except that permitted by paragraph (2) of subdivision (c) of
23 Section 226.18 of Regulation Z, provided that all of the
24 requirements and limitations set forth in subdivision (a) of this
25 section are satisfied. This chapter does not prohibit the disclosure
26 in that contract of additional information required or permitted
27 under Regulation Z, as in effect at the time that disclosure is
28 made.

29 (n) If the seller imposes a fee for document preparation, the
30 contract shall contain a disclosure that the fee is not a
31 governmental fee.

32 (o) A seller may not impose an application fee for a
33 transaction governed by this chapter.

34 (p) The seller or holder may charge and collect a fee not to
35 exceed fifteen dollars (\$15) for the return by a depository
36 institution of a dishonored check, negotiated order of withdrawal,
37 or share draft issued in connection with the contract, if the
38 contract so provides or if the contract contains a generalized
39 statement that the buyer may be liable for collection costs
40 incurred in connection with the contract.

(q) The contract shall disclose on its face, by printing the word “new” or “used” within a box outlined in red, that is not smaller than one-half inch high and one-half inch wide, whether the vehicle is sold as a new vehicle, as defined in Section 430 of the Vehicle Code, or a used vehicle, as defined in Section 665 of the Vehicle Code.

(r) The contract shall contain a notice with a heading in at least 12-point bold type and the text in at least 10-point bold type, circumscribed by a line, immediately above the contract signature line, that reads as follows:

THERE IS NO COOLING OFF PERIOD

California law does not provide for a “cooling off” or other cancellation period for vehicle sales. Therefore, you cannot later cancel this contract simply because you change your mind, decide the vehicle costs too much, or wish you had acquired a different vehicle. After you sign below, you may only cancel this contract with the agreement of the seller or for legal cause, such as fraud.

SEC. 3. Section 2982.2 is added to the Civil Code, to read:

2982.2. (a) (1) Prior to the execution of a conditional sale contract, the seller shall provide to a buyer a written disclosure that sets forth a description and the price of each item sold if the contract includes a charge for the item.

(2) Paragraph (1) applies to the following items:

(A) A service contract.

(B) An insurance product.

(C) A debt cancellation agreement.

(D) A theft deterrent device.

(E) A surface protection product.

(b) The disclosure required under subdivision (a) shall be in at least 10-point type and shall be contained in a document that is separate from the conditional sales contract and any purchase order.

SECTION 1.

SEC. 4. Section 2982.10 is added to the Civil Code, to read:

1 2982.10. (a) In consideration of the assignment of a
2 conditional sale contract, the seller shall not receive or accept
3 from the assignee any payment or credit based upon any amount
4 collected or received, or to be collected or received, under the
5 contract as a finance charge except to the extent the payment or
6 credit does not exceed the amount that would be calculated in
7 accordance with Regulation Z, whether or not Regulation Z
8 applies to the contract, as the contract's finance charge using, for
9 the purposes of the calculation, an annual percentage rate equal
10 to 2.5 percent for a contract having an original scheduled term of
11 60 monthly payments or less or 2 percent for a contract having an
12 original scheduled term of more than 60 monthly payments.

13 (b) This section does not apply in the following circumstances:

14 (1) Assignment to affiliates of the seller.

15 (2) Assignment with full recourse or under other terms
16 requiring the seller to bear the entire risk of financial
17 performance of the buyer.

18 (3) Assignment more than six months following the date of the
19 conditional sale contract.

20 (4) Isolated instances resulting from bona fide errors that
21 would otherwise constitute a violation of subdivision (a) if the
22 seller maintains reasonable procedures to guard against any
23 errors and promptly, upon notice of the error, remits to the
24 assignee any consideration received in excess of that permitted
25 by subdivision (a).

26 (c) For purposes of subdivision (b), "affiliate" means a person
27 that controls, is controlled by, or is under common control with
28 the seller. Affiliate does not include an assignee that is owned or
29 controlled by an auto manufacturer or distributor.

30 ~~SEC. 2.~~

31 *SEC. 5.* Section 4456.3 is added to the Vehicle Code, to read:

32 4456.3. (a) The department shall charge a fee for each
33 vehicle sold by a dealer or lessor-retailer and reported on a
34 report-of-sale form issued by the department to a dealer or
35 lessor-retailer, or for every vehicle sold by a dealer or
36 lessor-retailer where the report of the sale is transmitted
37 electronically or otherwise. The fees shall be deposited in the Car
38 Buyer's Restitution Fund established pursuant to Section 12201.

39 (b) The fee required under subdivision (a) shall be fifty cents
40 (\$0.50), for each vehicle sold and shall be collected until the

1 amount in the fund is two million five hundred thousand dollars
2 (\$2,500,000). Thereafter, the department shall collect the fee, as
3 necessary, to maintain the fund at that amount.

4 (c) Payment of the fee required under subdivision (a) is the
5 obligation of the dealer or lessor-retailer. A dealer or
6 lessor-retailer shall not separately charge a purchaser or lessee
7 for the fee.

8 ~~SEC. 3.~~

9 *SEC. 6.* Section 11713.1 of the Vehicle Code is amended to
10 read:

11 11713.1. It is a violation of this code for the holder of any
12 dealer's license issued under this article to do any of the
13 following:

14 (a) Advertise any specific vehicle for sale without identifying
15 the vehicle by its model, model-year, and either its license
16 number or that portion of the vehicle identification number that
17 distinguishes the vehicle from all other vehicles of the same
18 make, model, and model-year. Model-year is not required to be
19 advertised for current model-year vehicles. Year models are no
20 longer current when ensuing year models are available for
21 purchase at retail in California. Any advertisement that offers for
22 sale a class of new vehicles in a dealer's inventory, consisting of
23 five or more vehicles, that are all of the same make, model, and
24 model-year is not required to include in the advertisement the
25 vehicle identification numbers or license numbers of those
26 vehicles.

27 (b) Advertise the total price of a vehicle without including all
28 costs to the purchaser at time of sale, except taxes, vehicle
29 registration fees, the California tire fee, as defined in Section
30 42885 of the Public Resources Code, emission testing fees not
31 exceeding fifty dollars (\$50), actual fees charged for certificates
32 pursuant to Section 44060 of the Health and Safety Code, finance
33 charges, and any dealer document preparation charge. The dealer
34 document preparation charge shall not exceed forty-five dollars
35 (\$45).

36 (c) (1) Exclude from an advertisement of a vehicle for sale
37 that there will be added to the advertised total price at the time of
38 sale, charges for sales tax, vehicle registration fees, the California
39 tire fee, the fee charged by the state for the issuance of any
40 certificate of compliance or noncompliance pursuant to any

1 statute, finance charges, and any dealer document preparation
2 charge.

3 (2) The obligations imposed by paragraph (1) shall be satisfied
4 by adding to the advertisement a statement containing no
5 abbreviations and that is worded in substantially the following
6 form: “Plus government fees and taxes, any finance charges, any
7 dealer document preparation charge, and any emission testing
8 charge.”

9 (3) For purposes of paragraph (1), “advertisement” means any
10 advertisement in a newspaper, magazine, or direct mail
11 publication that is two or more columns in width or one column
12 in width and more than seven inches in length, or on any Web
13 page of a dealer’s Web site that displays the price of a vehicle
14 offered for sale on the Internet, as that term is defined in
15 paragraph (6) of subdivision (e) of Section 17538 of the Business
16 and Professions Code.

17 (d) Represent the dealer document preparation charge or
18 certificate of compliance or noncompliance fee, as a
19 governmental fee.

20 (e) Fail to sell a vehicle to any person at the advertised total
21 price, exclusive of taxes, vehicle registration fees, the California
22 tire fee, the fee charged by the state for the issuance of any
23 certificate of compliance or noncompliance pursuant to any
24 statute, finance charges, mobilehome escrow fees, the amount of
25 any city, county, or city and county imposed fee or tax for a
26 mobilehome, and any dealer document preparation charge, which
27 charges shall not exceed forty-five dollars (\$45) for the document
28 preparation charge and not to exceed fifty dollars (\$50) for
29 emission testing plus the actual fees charged for certificates
30 pursuant to Section 44060 of the Health and Safety Code, while
31 the vehicle remains unsold, unless the advertisement states the
32 advertised total price is good only for a specified time and the
33 time has elapsed. Advertised vehicles shall be sold at or below
34 the advertised total price, with statutorily permitted exclusions,
35 regardless of whether the purchaser has knowledge of the
36 advertised total price.

37 (f) (1) Advertise for sale, sell, or purchase for resale any new
38 vehicle of a line-make for which the dealer does not hold a
39 franchise.

(2) This subdivision does not apply to any transaction involving any of the following:

(A) A mobilehome.

(B) A recreational vehicle as defined in Section 18010 of the Health and Safety Code.

(C) A commercial coach, as defined in Section 18001.8 of the Health and Safety Code.

(D) An off-highway motor vehicle subject to identification as defined in Section 38012.

(E) A manufactured home.

(F) A new vehicle that will be substantially altered or modified by a converter prior to resale.

(G) A commercial vehicle with a gross vehicle weight rating of more than 10,000 pounds.

(H) A vehicle purchased for export and exported outside the territorial limits of the United States without being registered with the department.

(g) Sell a park trailer, as specified in Section 18009.3 of the Health and Safety Code, without disclosing in writing to the purchaser that a park trailer is required to be moved by a transporter or a licensed manufacturer or dealer under a permit issued by the Department of Transportation or a local authority with respect to highways under their respective jurisdictions.

(h) Advertise free merchandise, gifts, or services provided by a dealer contingent on the purchase of a vehicle. The term “free” includes merchandise or services offered for sale at a price less than the seller’s cost of the merchandise or services.

(i) Advertise vehicles, and related goods or services, at a specified dealer price, with the intent not to supply reasonably expectable demand, unless the advertisement discloses the number of vehicles in stock at the advertised price. In addition, whether or not there are sufficient vehicles in stock to supply a reasonably expectable demand, when phrases such as “starting at,” “from,” “beginning as low as,” or words of similar import are used in reference to an advertised price, the advertisement shall disclose the number of vehicles available at that advertised price.

For purposes of this subdivision, in any newspaper advertisement for a vehicle that is two model-years old or newer, the actual phrase that states the number of vehicles in stock at the

advertised price shall be (1) printed in a type size that is at least equal to one-quarter of the type size, and in the same style and color of type, used for the advertised price, however, in no case shall the phrase be printed in less than 8-point type size, and (2) be disclosed immediately above, below, or beside the advertised price without any intervening words, pictures, marks, or symbols.

The disclosure required by this subdivision is in addition to any other disclosure required by this code or any regulation regarding identifying vehicles advertised for sale.

(j) Use the term “rebate” or similar words such as “cash back” in advertising the sale of a vehicle unless the rebate is expressed in a specific dollar amount and is in fact a rebate offered by the vehicle manufacturer or distributor directly to the retail purchaser of the vehicle or to the assignee of the retail purchaser.

(k) Require a person to pay a higher price for a vehicle and related goods or services for receiving advertised credit terms than the cash price the same person would have to pay to purchase the same vehicle and related goods or services. For the purpose of this subdivision, “cash price” has the meaning as defined in subdivision (e) of Section 2981 of the Civil Code.

(l) Advertise a guaranteed trade-in allowance.

(m) Misrepresent the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction.

(n) (1) Use the terms “invoice,” “dealer’s invoice,” “wholesale price,” or similar terms that refer to a dealer’s cost for a vehicle in an advertisement for the sale of a vehicle or advertise that the selling price of a vehicle is above, below, or at either of the following:

(A) The manufacturer’s or distributor’s invoice price to a dealer.

(B) A dealer’s cost.

(2) This subdivision does not apply to either of the following:

(A) Any communication occurring during face-to-face negotiations for the purchase of a specific vehicle if the prospective purchaser initiates a discussion of the vehicle’s invoice price or the dealer’s cost for that vehicle.

(B) Any communication between a dealer and a prospective commercial purchaser that is not disseminated to the general public. For purposes of this subparagraph, a “commercial

1 purchaser” means a dealer, lessor, lessor-retailer, manufacturer,
2 remanufacturer, distributor, financial institution, governmental
3 entity, or person who purchases 10 or more vehicles during a
4 year.

5 (o) Violate any law prohibiting bait and switch advertising,
6 including, but not limited to, the guides against bait advertising
7 set forth in Part 238 (commencing with Section 238) of Title 16
8 of the Code of Federal Regulations, as those regulations read on
9 January 1, 1988.

10 (p) Make any untrue or misleading statement indicating that a
11 vehicle is equipped with all the factory installed optional
12 equipment the manufacturer offers, including, but not limited to,
13 a false statement that a vehicle is “fully factory equipped.”

14 (q) Affix on any new vehicle a supplemental price sticker
15 containing a price that represents the dealer’s asking price which
16 exceeds the manufacturer’s suggested retail price unless all of the
17 following occur:

18 (1) The supplemental sticker clearly and conspicuously
19 discloses in the largest print appearing on the sticker, other than
20 the print size used for the dealer’s name, that the supplemental
21 sticker price is the dealer’s asking price, or words of similar
22 import, and that it is not the manufacturer’s suggested retail
23 price.

24 (2) The supplemental sticker clearly and conspicuously
25 discloses the manufacturer’s suggested retail price.

26 (3) The supplemental sticker lists each item which is not
27 included in the manufacturer’s suggested retail price, and
28 discloses the additional price of each item. If the supplemental
29 sticker price is greater than the sum of the manufacturer’s
30 suggested retail price and the price of the items added by the
31 dealer, then the supplemental sticker price shall set forth that
32 difference and describe it as “added mark-up.”

33 (r) Advertise any underselling claim, such as “we have the
34 lowest prices” or “we will beat any dealer’s price,” unless the
35 dealer has conducted a recent survey showing that the dealer sells
36 its vehicles at lower prices than any other licensee in its trade
37 area and maintains records to adequately substantiate the claims.
38 The substantiating records shall be made available to the
39 department upon request.

1 (s) Advertise any incentive offered by the manufacturer or
2 distributor if the dealer is required to contribute to the cost of the
3 incentive as a condition of participating in the incentive program,
4 unless the dealer discloses in a clear and conspicuous manner
5 that dealer participation may affect consumer cost.

6 For purposes of this subdivision, “incentive” means anything
7 of value offered to induce people to purchase a vehicle,
8 including, but not limited to, discounts, savings claims, rebates,
9 below-market finance rates, and free merchandise or services.

10 (t) Display or offer for sale any used vehicle unless there is
11 affixed to the vehicle the Federal Trade Commission’s Buyer’s
12 Guide as required by Part 455 of Title 16 of the Code of Federal
13 Regulations.

14 (u) Fail to disclose in writing to the franchisor of a new motor
15 vehicle dealer the name of the purchaser, date of sale, and the
16 vehicle identification number of each new motor vehicle sold of
17 the line-make of that franchisor, or intentionally submit to that
18 franchisor a false name for the purchaser or false date for the date
19 of sale.

20 (v) Enter into a contract for the retail sale of a motor vehicle
21 unless the contract clearly and conspicuously discloses whether
22 the vehicle is being sold as a new vehicle or a used vehicle, as
23 defined in this code.

24 (w) Use a simulated check, as defined in subdivision (a) of
25 Section 22433 of the Business and Professions Code, in an
26 advertisement for the sale or lease of a vehicle.

27 (x) Fail to disclose, in a clear and conspicuous manner in at
28 least 10-point bold type on the face of any contract for the retail
29 sale of a new motor vehicle that this transaction is, or is not,
30 subject to a fee received by an autobroker from the selling new
31 motor vehicle dealer, and the name of the autobroker, if
32 applicable.

33 (y) As used in this section, the terms “make” and “model”
34 have the same meaning as is provided in Section 565.3 of Title
35 49 of the Code of Federal Regulations.

36 (z) Advertise for sale or sell a used vehicle as “certified” or
37 use any similar descriptive term in the advertisement or the sale
38 of a used vehicle that implies the vehicle has been certified to
39 meet the terms of a used vehicle certification program unless:

(1) The odometer on the vehicle indicates actual mileage, and has not been rolled back or otherwise altered to show fewer miles, or replaced with an odometer showing fewer miles than actually driven.

(2) The dealer has no actual knowledge that the vehicle has been repurchased by a dealer or manufacturer pursuant to a state or federal warranty statute.

(3) The title to the vehicle has not been inscribed with the notation “Lemon Law Buyback,” “manufacturer repurchase,” “salvage,” “junk,” “nonrepairable,” “flood,” or similar designation or title designation required by this state or another state.

(4) The vehicle has been inspected by a technician or technicians qualified to inspect for collision repair and mechanical condition.

(5) Prior to sale, the dealer provides the buyer with a completed inspection report indicating all the components inspected pursuant to the vehicle certification program and whether they meet the standards of the vehicle certification program.

(6) The dealer does not disclaim any warranties of merchantability on the vehicle.

(7) The vehicle is not sold “AS IS.”

(aa) (1) Nothing in subdivision (z) shall be construed to require that a seller offer a “certified” vehicle program.

(2) All requirements in subdivision (z) are minimum requirements, and do not preclude a seller from offering a “certification” program that is more protective of the buyer.

~~SEC. 4.~~

~~SEC. 7.~~ Section ~~11713.16~~ 11713.17 is added to the Vehicle Code, to read:

~~11713.16.~~

11713.17. It is unlawful and a violation of this code for the holder of any dealer’s license issued under this article to do any of the following:

(a) Negotiate the terms of a vehicle sale or lease contract and then add charges to the contract for any goods or services without previously disclosing to the consumer the goods and services to be added and obtaining the consumer’s consent.

(b) (1) Inflate the amount of an installment payment or down payment or extend the maturity of a sale or lease contract for the purpose of disguising the actual charges for goods or services to be added by the dealer to the contract.

(2) For purposes of paragraph (1), “goods or services” means any type of good or service, including, but not limited to, insurance and service contracts.

SEC. 8. Section 11713.18 is added to the Vehicle Code, to read:

11713.18. A dealer that obtains a consumer credit score, as defined in subdivision (b) of Section 1785.15.1 of the Civil Code, from a consumer credit reporting agency, as defined in subdivision (d) of Section 1785.3 of the Civil Code, for use in connection with an application for credit initiated by a consumer for the purchase or lease of a motor vehicle for personal, family, or household use shall provide, prior to the sale or lease of the vehicle the following information to the consumer in at least 10-point type on a document separate from the sale or lease contract:

(a) The credit score obtained and used by the dealer and the name of the credit reporting agency providing the credit score to the dealer;

(b) The range of possible credit scores established by the credit reporting agency that provided the credit score;

(c) The following notice, which shall include the name, address, and telephone number of each credit reporting agency providing a credit score that was obtained and used by the dealer:

“NOTICE TO VEHICLE CREDIT APPLICANT

If the dealer obtains and uses a credit score from a credit reporting agency in connection with your application to finance the acquisition of a vehicle, the dealer must disclose the score to you.

The credit score is a computer generated summary calculated by a credit reporting agency at the time the dealer requests the score and is based on information the credit reporting agency has on file. The scores are based on data about your credit history and payment patterns. Credit scores are important

1 *because they are used in determining whether to extend credit.*
2 *The score may also be used to determine the annual percentage*
3 *rate you may be offered. Credit scores can change over time,*
4 *depending on your conduct, how your credit history and payment*
5 *patterns change, and how credit scoring technologies change.*
6 *Credit scores may also vary from one credit reporting agency to*
7 *another.*

8 *If you have questions about your credit score, contact the*
9 *credit reporting agency at the address and telephone number*
10 *provided. The credit reporting agency does not participate in the*
11 *decision to take any action on your application for credit and is*
12 *unable to provide you with specific reasons for any decision on*
13 *the credit application.*

14 *If you have questions concerning credit terms relative to your*
15 *purchase or lease of a vehicle, ask the dealer.”*

16 *(d) This section does not require a dealer to provide more*
17 *than one disclosure for each purchase or lease transaction.*

18 ~~SEC. 5.~~

19 SEC. 9. Chapter 11 (commencing with Section 12200) is
20 added to Division 5 of the Vehicle Code, to read:

21
22 CHAPTER 11. CAR BUYER'S RESTITUTION FUND
23

24 12200. The following definitions apply to this chapter:

25 (a) "Application" is an application to the department for the
26 payment of an eligible claim from the fund.

27 (b) "Consumer" is a person who engaged in either of the
28 following:

29 (1) Purchased or leased, or become obligated to purchase or
30 lease, a motor vehicle that is used, or is to be used, primarily for
31 personal, family, or household purposes from a dealer or
32 lessor-retail licensed under this code.

33 (2) Consigned for sale a motor vehicle that is used primarily
34 for personal, family, or household purposes to a dealer licensed
35 under this division.

36 (c) "Eligible claim" is an unsatisfied claim for economic loss
37 that accrues after July 1, 2006, as a result of the failure of a
38 dealer licensed under this division, or if applicable, a
39 lessor-retailer licensed under this division, to do any of the
40 following:

1 (1) Remit license or registration fees received from a
2 consumer to the department.

3 (2) Pay to the lessor registered in accordance with Section
4 4453.5, or the legal owner reflected on the ownership certificate
5 of a motor vehicle transferred by a consumer to the dealer, the
6 amount necessary to discharge the prior credit or lease balance
7 owed to the lessor or legal owner.

8 (3) Pay the amount specified in a consignment agreement to a
9 consumer after the sale of a consigned motor vehicle; or, in the
10 absence of a written consignment agreement, pay the sale amount
11 as established by other evidence.

12 (d) "Fund" is the Car Buyer's Restitution Fund.

13 12201. (a) The Car Buyer's Restitution Fund is hereby
14 established in the State Treasury.

15 (b) The fees collected pursuant to Section 4456.3, and the
16 interest earned on those fees, shall be deposited in the fund. The
17 fees and any accrued interest or earnings shall be invested in the
18 Special Deposit Fund pursuant to Section 16370 of the
19 Government Code or any other appropriate interest-bearing or
20 revenue earning trust account approved by the director.

21 (c) Notwithstanding Section 13340 of the Government Code,
22 the money in the fund is hereby continuously appropriated,
23 without regard to fiscal years, to the department to compensate or
24 reimburse consumers as prescribed in this chapter. Moneys from
25 the fund for the administration of this chapter by the department
26 shall be available to the department, upon appropriation, by the
27 Legislature.

28 12202. (a) A consumer may file an application with the
29 department for the payment of a consumer's eligible claim if a
30 dealer or lessor-retailer against whom the claim is asserted has
31 ceased selling and leasing motor vehicles to the general public or
32 has become subject to a petition in bankruptcy.

33 (b) The application shall be verified and shall set forth the
34 consumer's name, address, and telephone number and the
35 amount and description of the eligible claim, and what action, if
36 any, the applicant has taken to recover the amount of the eligible
37 claim.

38 (c) The application shall be accompanied by a copy of the
39 agreement, if any, between the consumer and the dealer or

1 lessor-retailer, unless the agreement is unnecessary to the
2 department's determination of the validity of the claim.

3 (d) If the eligible claim is based on the failure to remit license
4 or registration fees, the application shall be accompanied by
5 evidence demonstrating that the consumer paid money or other
6 consideration for the fees or became obligated to pay those fees.
7 The eligible claim shall be limited to the dollar amount of the
8 license or registration fees not remitted and any late charge or
9 penalty.

10 (e) (1) If the eligible claim is based on the failure to pay the
11 proceeds of a consignment sale, the application shall be
12 accompanied by all of the following:

13 (A) The consignment agreement or, in the absence of a written
14 agreement, other evidence establishing a consignment.

15 (B) Evidence that the consigned motor vehicle was sold.

16 (C) The consumer's verified statement, under penalty of
17 perjury, that the consumer did not receive the portion of the
18 proceeds of the sale to which the consumer was entitled.

19 (2) Subject to the limitations contained in Section 12205, the
20 eligible claim is limited to the dollar amount specified in a
21 written consignment agreement to be paid to the consignor or, in
22 the absence of a written consignment agreement, other evidence
23 establishing the sale amount.

24 (f) If the eligible claim is based on the failure to pay the lessor
25 or legal owner of the motor vehicle taken in trade or purchased
26 from the consumer, the application shall be accompanied by a
27 statement from the lessor or legal owner of the amount, if any,
28 that he or she received from the dealer. Subject to the limitations
29 contained in Section 12205, the eligible claim is limited to the
30 dollar amount necessary to discharge the credit or lease balance
31 owing on the trade-in or purchased vehicle.

32 (g) The department may require reasonable additional
33 information designed to facilitate payment of eligible claims.

34 (h) The application shall be filed within one year of the date
35 upon which the dealer or lessor-retailer ceased selling or leasing
36 motor vehicles to the general public or became subject to a
37 petition in bankruptcy.

38 12203. The department shall develop a notice fully explaining
39 a consumer's right to make a claim from the fund, an application
40 form, and an explanation of how to complete the application.

1 12204. (a) Within 30 days of receiving an application, the
2 department shall notify the applicant, in writing, that the
3 application is complete or, if the application is incomplete, what
4 additional information is required.

5 (b) (1) Within 60 days of the department's receipt of a
6 complete application, the department shall either pay the eligible
7 claim from the fund as prescribed in this chapter or deny the
8 claim.

9 (2) The department, for good cause, may extend the 60-day
10 period to not more than an additional 90 days to investigate the
11 accuracy of the application or evidence submitted by a dealer or
12 lessor-retailer.

13 12205. If the department pays the claim, the amount of the
14 payment shall be the total of the amount of the eligible claim, but
15 in no event shall the payment exceed ten thousand dollars
16 (\$10,000) for a transaction.

17 12206. If the department denies the claim, the department
18 shall notify the applicant of the denial, the factual and legal bases
19 for the denial, and the applicant's right to appeal the denial, in
20 writing, to the director within 60 days of receipt of the notice or
21 any longer period permitted by the department. If an appeal is not
22 requested within that 60 days or any additional period reasonably
23 requested by the consumer and granted by the department, the
24 department's decision shall be final. If an appeal is requested, the
25 appeal shall be conducted pursuant to the procedure established
26 by regulation adopted by the department.

27 12207. If the department pays an eligible claim, all of the
28 following apply:

29 (a) Immediately upon payment, the department shall be
30 subrogated to all of the consumer's rights against the dealer or
31 lessor-retailer to the extent of the amount of the payment. The
32 department shall seek to recover the claim amount from the
33 dealer's bond required by Section 11710.

34 (b) The department may bring an action to recover the amount
35 of the payment and shall be entitled to recover costs and
36 reasonable attorney's fees.

37 12208. A person who, with the intent to prejudice, damage, or
38 defraud the fund, files with the department a false application,
39 statement, or other document under this chapter, is guilty of a

1 misdemeanor punishable by confinement in the county jail for
2 not more than one year.

3 12209. The department may adopt regulations to implement
4 this chapter in accordance with Chapter 3.5 (commencing with
5 Section 11340) of Part I of Division 3 of Title 2 of the
6 Government Code and shall adopt regulations to establish the
7 appeal procedure described in Section 12206 by July 1, 2006.
8 Any interim emergency regulations adopted to implement this
9 chapter shall be considered by the Office of Administrative Law
10 as necessary for the immediate preservation of the public peace,
11 health, and safety and of the general welfare.

12 ~~SEC. 6.~~

13 *SEC. 10.* No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the
18 penalty for a crime or infraction, within the meaning of Section
19 17556 of the Government Code, or changes the definition of a
20 crime within the meaning of Section 6 of Article XIII B of the
21 California Constitution.